

REMARKS

1. In response to the Office Action mailed May 16, 2007, Applicants respectfully requests reconsideration. Claims 2, 4 through 9, 11 through 16 and 18 through 22 were previously presented in the application. In the outstanding Office Action, all claims have been rejected. By the foregoing Amendments, claims 4, 11 and 18 have been amended. No claims have been added or canceled. Thus, upon entry of this paper, claims 2, 4 through 9, 11 through 16 and 18 through 22 will be pending in this application. Of these eighteen (18) claims, three (3) claims (claims 2, 9, and 16) are independent. Based on the above Amendments and following Remarks, Applicants respectfully requests that all outstanding objections and rejections be reconsidered, and that they be withdrawn.

Art of Record

2. Applicants acknowledge receipt of form PTO-892 identifying additional references made of record by the Examiner.
3. Applicants thank the Examiner for returning the forms PTO/SB/08a and PTO/SB/08b filed by Applicants on April 11, 2007, which have been initialed by the Examiner indicating consideration of the references cited therein.

Claim Rejections under Section 112

4. Dependent claims 4, 11, and 18 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This rejection is obviated by the amendments to claims 4, 11 and 18.

Claim Rejections under Section 103(a)

5. Independent claims 2, 9, and 16, and dependent claims 4 through 8, 11 through 15, and 18 through 22, have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,314,558 to Angel, *et al.* ("Angel") in view of Guowei Huang, "World Wide Web: Beyond the Basics," web site: <http://ei.cs.vt.edu/wwwbtb/books/index.html> 1996

(“Huang”)¹. Based upon the above Amendments and following Remarks, Applicants respectfully request reconsideration and withdrawal of these rejections.

6. Independent claim 2 recites “inserting instrumentation code in a bytecode representation of the selected at least one method without modifying a source code of the selected at least one method by *generating a wrapper method that contains the instrumentation code* and a call to the bytecode representation of the at least one method, wherein the instrumentation code comprises bytecodes....” (See Applicants’ claim 2, above; emphasis added). Independent claims 9 and 16 contain a similar feature. The Examiner stated that Angel failed to “teach wherein the generating of a wrapper contains a call to the byte representation of the at least one method.” (See Office Action, page 4). According to the Examiner, Angel “teaches only that wrappers are generative for native method calls.” (See Office Action, page 4). To remedy this admit deficiency of Angel, the Examiner turns to Huang. Applicants respectively submit that this combination of cited references fails to teach every element of the claims and that there are no apparent reasons for combining the cited references to support the legal conclusion of obviousness.

7. First, the Examiner states that Huang “teaches wherein Java is used to implement an operating system (OS), thereby making all native code accessible to applications implemented as byte code within the JavaOS.” (See Office Action, page 4). Huang does not teach or suggest, and the Examiner does not allege, generating a wrapper that contains a call to the bytecode representation of the at least one method as claimed. Instead, the Examiner asserts that if Java is implemented as the operating system that all the applications are native. This assertion is factually inconsistent with the teachings of Huang shows that “just enough kernel features” are implemented to support the Java Virtual Machine. (See Huang, page 3, para. 3). Further, Huang states that “[w]ith little performance tuning and *minimal use of native methods...*” (See Huang page 4; emphasis added). To implement the JavaOS without the operating system still requires minimal use of native methods. In addition, as previously stated by Applicants native code refers to machine code that is platform specific and can only run on a particular platform. Huang states that “all Java programs and applets are platform *independent.*” (See Huang page 4; emphasis added). Thus, Huang cannot even support the

¹ The Examiner cited Marc Abrams, ed., *World Wide Web – Beyond the Basics*, Prentice Hall, 1998, but has provided Applicants with a web page printout from <http://ei.cs.vt.edu/wwwbtb/book/index.html>. On the printout, there is a disclaimer that “The material on the Web site has been extensively revised, and is now available in a software cover book.” Applicants request that the Examiner change the citation on PTO-892 from

Examiner's assertions that all the applications are native if JavaOS is used. Therefore, the Examiner has failed to cite a combination of reference that teach or suggest every element of claims 2, 9 and 16, and thus claims 2, 9, and 16 should be allowed.

8. Second, the Examiner states that it would have been obvious to one of ordinary skill to modify "the teachings of Angel with the teachings of Abrams [Huang]" because "using an operating system written entirely in Java would eliminated the overhead of the host operating system, thereby allowing for an accurate measure of the performance of the instrumented byte code application." (See Office Action, page 5). Even though the Examiner cited sections of both references, these sections fail to support the self-serving conclusory statement. The Supreme Court has made it clear that the apparent reason for combining references must be made explicit to facilitate the review process. (See *KSR v. Teleflex*, 550 U.S. ____ (Slip Op. page 14) (2007)). The Examiner failed to provide explicit reasons, since neither of the cited sections support the legal conclusion of obviousness. Neither of the cited references teaches eliminating the operating system by using JavaOS would allow for an accurate measure of the performance of the instrumented byte code application. Applicants request an affidavit under 37 C.F.R. § 1.104(d)(2) from the Examiner to provide the explicit reasons supporting this self-serving conclusory statement. Therefore, for least these additional reasons, the combination of Angel in view of Huang is improper and should be withdrawn.

Dependent Claims

9. The dependent claims incorporate all of the subject matter of their respective independent claims and add additional subject matter which makes them *a fortiori* independently patentable over the art of record. Accordingly, Applicants respectfully request that the outstanding rejections of the dependent claims be reconsidered and withdrawn.

the 1998 book to the 1996 web site, since the 1996 web site was cited by the Examiner and the 1998 book was never considered.

Conclusion

10. In view of the foregoing, this application should be in condition for allowance. A notice to this effect is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ajay A. Jagtiani', is written over a horizontal line.

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